

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**14-CV-9126 (KBF)**

**-against-**

**ANTHONY J. THOMPSON Jr.,  
JAY FUNG, and ERIC VAN NGUYEN,**

**Defendants,**

**-and-**

**JOHN BABIKIAN and KENDALL THOMPSON,**

**Relief Defendants.**

**DECLARATION OF MICHAEL D. VITALE IN SUPPORT OF  
THE SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT AGAINST DEFENDANT ANTHONY J. THOMPSON, JR.**

I, Michael D. Vitale, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury under the laws of the United States of America that the following statements are true and correct:

1. I am employed as a paralegal by CACI Inc.-Federal as a federal contractor in the Enforcement Division of the New York Regional Office of the plaintiff Securities and Exchange Commission ("SEC"). I have worked in this capacity for the SEC for approximately 5 years.

2. I submit this declaration, made with my personal knowledge, except where otherwise stated, in support of the SEC's Motion for Summary Judgment against Defendant, Anthony J. Thompson in the above-captioned proceedings.

3. Where I make this Declaration based on personal knowledge, information and belief, sources of my information and belief are documents obtained by the Commission staff and reviewed by me, including bank account statements, wires, checks; brokerage records and transaction records for Defendants and related entities.

**Review of Relevant Bank and Brokerage Account Records**

4. I have analyzed both corporate and personal bank and brokerage account records obtained by the SEC during the investigation and discovery phases of this matter, including records from or mentioning the following financial institutions, as well as the “All Wires Database” produced by Blast Applications (SEC-BLAST\_APP-E-0058584) to conduct my analysis:

- a. PNC Bank, N.A.;
  - i. I reviewed the bank records of OTC Solutions, LLC (“OTC”), in account XXXXXX-9986 for the period from November 2009 through April 2010 and September through October 2010. Defendant, Anthony J. Thompson, Jr. (“A. Thompson”) has been the sole signatory on the account since October 25, 2007 (See Ex. 1, Account Registration and Agreement - 9986)
  - ii. I reviewed the bank records of Microcapster Corp. (“Microcapster”), in account XXXXXX-7555 for the period from November 2009 through April 2010 and September through October 2010. Defendant, A. Thompson has been the sole signatory on the account since July 20, 2009 (See Ex. 2, Account Registration and Agreement - 7555)
  - iii. I reviewed the bank records of A. Thompson and his wife, Kendall Mackintosh Thompson (“KM. Thompson”), in account XXXXXX-7584

for the period from November 2009 through April 2010 and September through October 2010. Defendant A. Thompson and KM. Thompson have been the sole signatories on the account since October 1, 2009 (See Ex. 3, Account Registration and Agreement - 7584)

iv. I reviewed the bank records of A. Thompson and his wife, KM.

Thompson, in account XXXXXX-9705 for the period from November 2009 through April 2010 and September through October 2010.

Defendant A. Thompson and KM. Thompson have been the sole signatories on the account since October 1, 2009 (See Ex. 4, Account Registration and Agreement - 9705)

v. I reviewed the bank records of A. Thompson and his wife, KM.

Thompson, in account XXXXXX-7512 for the period from March 2010 through April 2010 and September through October 2010. Defendant A. Thompson and KM. Thompson have been the sole signatories on the account since March 11, 2010 (See Ex. 5, Account Registration and Agreement - 7512)

b. Chase Manhattan Bank

i. Chase Manhattan Bank (“Chase”), account XXXXXX-0021, is Lighthouse Financial Group/Penson Financial Services, Inc.’s account used in this instance for wiring funds from OTC’s brokerage account, XXXX-1619 and Microcapster’s brokerage account, XXXX-1001. (See Ex. 6, 2009.12.01 – Wire from Lighthouse Financial Group/Penson, OTC’s brokerage account (1619) to OTC via Chase in the amount of

\$551,516.65; See Ex. 7 - Wire from D. Weckstein & Co., Inc./Penson, OTC's brokerage account (1001) to OTC via Chase in the amount of \$1,510,267.96).

c. Bank of New York

- i. The Bank of New York ("BNY") (XXXXXX-0018) appears in transactions as the bank transferring funds on behalf of Oppenheimer & Co., Inc. ("Oppenheimer") to Oppenheimer's clients OTC and Microcapster.
- ii. The Bank of New York (XXXXXX-0018) also acts the as the intermediary bank in SWIFT transfers to accounts in Caisse Centrale DesJardins Montreal, CA ("Caisse Centrale"), of Eric Van Nguyen, XXXXXXXXXXXXXXX-1465; and, Canada, Inc., XXXXXXXXXXXXXXX-7257

d. Deutsche Bank Trust Co. Americas

- i. The Deutsche Bank Trust Co. Americas ("Deutsche Bank") account, XXXXX-1033, is the account used as the intermediary Bank in SWIFT transfers to the account of Firstman Limited, Ayia Paraskevi and Strovolos Nicosia in the Bank of Cyprus Public Company Limited, ("Bank of Cyprus") XXXXXXXXXXX-3206.

e. Bank of America, N.A.

- i. Bank of America, N.A. ("BOA") is the bank used by Carrillo-Huettel, LP, Attorney-Client Trust Account, XXXXXXX-1027 in the transfer of trade proceeds to OTC.
- ii. Bank of America, N.A. is also the depository bank for the distribution of funds to Pudong, LLC, XXXXXXX-5106.

f. Wells Fargo Bank, N.A.

i. Wells Fargo Bank, N.A. (“Wells Fargo”), is the depository bank for the distribution of funds to Capital K. Corp., XXXXXX-3522.

g. TowneBank

i. TowneBank is the depository bank for the distribution of funds to Justin M. Failla (XXXXXX-4345)

h. Lighthouse Financial Group or D. Weckstein & Co., Inc./Penson Financial Services Inc.

i. Anthony J. Thompson, Jr. has been the sole signatory of the Penson Accounts in the name of OTC, XXXX-1619 and XXXX-1001 (See Ex. 8 – Penson (Lighthouse Financial) Account Agreement, XXXX-1619; and See Ex. 9 – Penson (D. Weckstein & Co., Inc.) Opening Document with wire, XXXX-1001)

i. Oppenheimer & Co. Inc.

i. Oppenheimer is the broker for certain trades on behalf of OTC, XXX-XXX-3555 and Microcapster, XXX-XXX-1666. A. Thompson is the sole signatory on both of the accounts with Oppenheimer (See Ex. 10 – Signature page and first page of January 2010 account statement for OTC account XXX-XXX-3555; See Ex. 11 – Signature page of A. Thompson for Microcapster account XXX-XXX-1666).

5. I relied upon information culled from the records of the foregoing parties to conduct my analysis. I will breakdown the analysis by Issuer.

**Analysis By Issuer: Blast Applications (“BLAP”)**

6. The first transaction is always the deposit from the broker or the party acting on A. Thompson’s behalf into his account. On December 1, 2009 Lighthouse Financial Group/Penson wired \$551,516.65 from OTC’s brokerage account, XXXX-1619 (“1619”) into OTC’s bank account at PNC Bank (“PNC”), XXXXXX-9986 (“9986”) from the proceeds of the sales of BLAP (See Ex. 6).

7. Following the foregoing transaction, there were six distributions made from OTC’s PNC account, (9986) via wire:

**List of Outgoing Wires from OTC (9986) after BLAP Trade Deposit**

- a. 12/2/2009 – OTC (9986) wire to Pudong, LLC at BOA, XXXXXXXXX-5106 (“5106”) in the amount of \$81,000.00. (Ex. 12)
- b. 12/2/2009 – OTC (9986) wire (SWIFT transfer via BONY) to Eric Van Nguyen at Caisse Centrale, XXXXXXXXXXXXX-1465 (“1465”) in the amount of \$81,000.00. (Ex. 13)
- c. 12/4/2009 – OTC (9986) wire (SWIFT transfer via Deutsche Bank) to Firstman Limited, Ayia Paraskevi, Strovolos Nicosia at Bank of Cyprus, XXXXXXXXXXXX-3206 (“3206”) in the amount of \$50,000.00. (Ex. 14)
- d. 12/4/2009 – OTC (9986) wire to A. Thompson and KM. Thompson at PNC, XXXXXX-7584 (“7584”) in the amount of \$50,000.00. (Ex. 15)
- e. 12/9/2009 – OTC (9986) wire to Pudong, LLC at BOA, (5106) in the amount of \$100,000.00. (Ex. 16)
- f. 12/9/2009 – OTC (9986) wire (SWIFT transfer via BONY) to Eric Van Nguyen at Caisse Centrale, (1465) in the amount of \$100,000.00 (Ex. 17)

8. The total distributions from the original amount received, \$551,516.65, from Penson equals -\$462,000.00. Since one of those distributions was \$50,000.00 to A. Thompson and KM. Thompson's account (See Ex. 15), it decreases the amount of the distribution by that amount to -\$412,000.00 leaving a profit of \$139,516.65 for Anthony Thompson.

**Analysis By Issuer: Blue Gem ("BGEM")**

9. On December 22, 2009, Microcapster's broker, Oppenheimer & Co. Inc. wired \$1,109,366.00 from Microcapster's brokerage account, XXX-XXX-1666 ("1666") to Microcapster's bank account, XXXXXX-7555 ("7555") at PNC from the proceeds of the sales of BGEM (See Ex. 18)

10. Following the foregoing transaction, there were six distributions made from Microcapster's PNC account, (7555) via wire:

**List of Outgoing Wires from Microcapster (7555) after BGEM Trade Deposit**

- g. 12/22/2009 – Microcapster (7555) wire to Pudong, LLC at BOA, (5106) in the amount of \$219,000.00. (Ex. 19)
- h. 12/22/2009 – Microcapster (7555) wire (SWIFT transfer via BONY) to Eric Van Nguyen at Caisse Centrale, (1465) in the amount of \$130,000.00. (Ex. 20)
- i. 12/23/2009 – Microcapster (7555) wire to Capital K Corp. at Wells Fargo, XXXXXX-3522 ("3522") in the amount of \$225,000.00. (Ex. 21)
- j. 12/23/2009 – Microcapster (7555) wire to A. Thompson and KM. Thompson at PNC, (7584) in the amount of \$200,000.00. (Ex. 22)
- k. 12/23/2009 – Microcapster (7555) wire to Justin M. Failla at TowneBank, XXXXXX-4345 ("4345") in the amount of \$50,000.00. (Ex. 23)

- l. 12/23/2009 – Microcapster (7555) wire to OTC at PNC, (9986) in the amount of \$125,000.00. (Ex. 24)

11. The total distributions from the original amount received, \$1,109,366.00, from Oppenheimer equals -\$949,000.00. Since one of those distributions was A. Thompson and KM. Thompson's account in the amount of \$200,000.00 (See Ex. 22) and another was to OTC in the amount of \$125,000.00 (See Ex. 24), it decreases the amount of the distribution by that amount to -\$624,000.00 leaving a profit of \$485,366.00 for Anthony Thompson.

**Analysis By Issuer: Mass Hysteria Entertainment Company, Inc. ("MHYS")**

12. On January 27, 2010, OTC's broker, Oppenheimer wired \$657,741.54 from OTC's brokerage account, (3555) to OTC's bank account, (9986) at PNC from the proceeds of the sales of MHYS (See Ex. 25). The following day, January 28, 2010, Oppenheimer wired \$71,671.36 from OTC's brokerage account, (3555) to OTC's bank account, (9986) at PNC from the proceeds of the sales of MHYS (See Ex. 26). The total proceeds from the sale of MHYS was \$729,412.90.

13. Following the foregoing transaction, there were three distributions made from OTC's PNC account, (9986):

**List of Outgoing Transactions from OTC (9986) after MHYS Trade Deposit**

- a. 1/27/2010 – OTC (9986) check in the amount of \$175,000.00 made payable to Anthony J. Thompson, Jr., notation states "January Pay" (Ex. 27)
- b. 1/27/2010 – OTC (9986) Debit Memo in the amount of \$95,000.00 to A. Thompson PNC Checking account (account number not specified on Debit Memo) (Ex. 28)
- c. 2/1/2010 – OTC (9986) wire (SWIFT transfer via BONY) to Canada, Inc. at Caisse Centrale, XXXXXXXXXXXX-7257 ("7257") in the amount of \$165,000.00 (Ex. 29)



14. The total distributions from the original amount received, \$729,412.90, from OTC's Oppenheimer account equals -\$435,000.00. Since two of those distributions were payable to A. Thompson in the amount of \$175,000.00 (See Ex. 27) and \$95,000.00 (See Ex. 28), it decreases the amount of the distribution by 270,000.00 to -\$165,000.00 leaving a profit of \$564,412.00 for Anthony Thompson.

**Analysis By Issuer: Lyric Jeans, Inc. ("LYJN")**

15. On March 29, 2010, OTC's broker, D. Weckstein & Co., Inc. ("D. Weckstein") wired \$1,510,578.96 from OTC's brokerage account, (1001) to OTC's bank account, (9986) at PNC from the proceeds of the sales of LYJN (See Ex. 7).

16. Following the foregoing transaction, there were three distributions made from OTC's PNC account, (9986):

**List of Outgoing Transactions from OTC (9986) after LYJN Trade Deposit**

- a. 3/30/2010 – OTC (9986) wire (SWIFT transfer via BONY) to Canada, Inc. at Caisse Centrale, (7257) the amount of \$760,000.00. (See Ex. 30)
- b. 3/30/2010 - OTC (9986) wire to Pudong, LLC at BOA, (5106) in the amount of \$90,000.00. (See Ex. 31)
- c. 4/1/2010 – OTC (9986) wire to A. Thompson account at PNC, (7512) in the amount of \$250,000.00. (See Ex. 32)

17. The total distributions from the original amount received, \$1,510,578.96, from OTC's Oppenheimer account equals -\$1,100,000.00. Since one of the distributions is a wire to A. Thompson and KM Thompson's account at PNC (7512) in the amount of \$250,000.00 (See Ex. 32), it decreases the amount of the distribution by 250,000.00 to -\$850,000.00 leaving a profit of \$660,578.96 for Anthony Thompson.

**Analysis By Issuer: Smart Holdings, Inc. ("SMHS")**

18. OTC Solutions, LLC entered into an agreement with Carrillo-Huettel, LLP in 2010. On October 5, 2010, Carrillo-Huettel wired \$525,000.00 from their Attorney-Client Trust Account (1027) to OTC's PNC Bank account (9986) from the proceeds of sales of SMHS (See Ex. 33).

19. Following the foregoing transaction, there were two distributions made from OTC's PNC account, (9986):

- a. 10/5/2010 – OTC (9986) wire to A. Thompson account at PNC, (7512) in the amount of \$315,000.00. (See Ex. 34)
- b. 10/5/2010 – OTC (9986) wire to A. Thompson account at PNC, (7584) in the amount of \$10,000.00. (See Ex. 35)

20. The total distributions from the original amount received, \$525,000.00, are \$325,000.00, however they are all re-distributions to A. Thompson accounts. Accordingly, the profit realized by Anthony Thompson in the sale of SMHS is equal to \$525,000.00.

**CONCLUSION**

21. Anthony Thompson, as an individual and through his companies realized the following profits from his trades of BLAP, BGEM, MHYS, LYJN, and SMHS:

|                 |                       |
|-----------------|-----------------------|
| a. BLAP:        | \$139,516.65          |
| b. BGEM:        | \$485,366.00          |
| c. MHYS:        | \$564,412.00          |
| d. LYJN:        | \$660,578.96          |
| e. <u>SMHS:</u> | <u>\$525,000.00</u>   |
| <b>TOTAL</b>    | <b>\$2,374,873.61</b> |

22. Accordingly, the total profit realized by Anthony Thompson individually and through his companies, OTC Solutions, LLC and Microcapster, Corp. is \$2,374,873.61.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 15, 2019.



Michael D. Vitale  
Paralegal Contractor